

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

EUREKA RESOURCES, LLC,

Plaintiff,

v.

HOWDEN ROOTS, LLC,

Defendant.

No. 4:20-CV-02222

(Chief Judge Brann)

**ORDER**

**APRIL 11, 2022**

On August 11, 2021, the Court denied Defendant Howden Roots, LLC's motion to dismiss.<sup>1</sup> But after several months of discovery, the parties now "agree . . . that there is a lack of complete diversity between the parties' LLC members and thus there is no subject matter jurisdiction."<sup>2</sup> Plaintiff Eureka Resources, LLC, also "agrees with Howden that the action should be dismissed without prejudice."<sup>3</sup> Accordingly, the action is dismissed without prejudice.

The parties disagree, however, about whether the Court may vacate its August 2021 Order denying Howden's motion to dismiss. Eureka argues that the Court cannot vacate that Order because it was not a final order under Federal Rule of Civil Procedure 60(b). Writing for this Court, the Honorable Yvette Kane

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<sup>1</sup> Docs. 46, 47.

<sup>2</sup> Doc. 60 at 7.

<sup>3</sup> *Id.*

rejected the very same argument in *Jones v. South Williamsport School District*.<sup>4</sup> Judge Kane held that “the Court also has inherent power to modify its interlocutory orders” and vacated her prior order.<sup>5</sup> Likewise, the Court’s August 11, 2021, Memorandum Opinion and Order (Docs. 46, 47) are now vacated. Accordingly, **IT IS HEREBY ORDERED** that:

1. Howden’s motion to dismiss the Amended Complaint and vacate the August 11, 2021 Order (Doc. 57) is **GRANTED**.
2. The Clerk of Court is further directed to **CLOSE** the case file.

BY THE COURT:

*s/ Matthew W. Brann*

Matthew W. Brann

Chief United States District Judge

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<sup>4</sup> No. 4:11-CV-1179, 2012 WL 5987132, at \*2 (M.D. Pa. Nov. 29, 2012).

<sup>5</sup> *Id.*